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**IN THE  
COURT OF APPEALS OF INDIANA**

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FRED LANDERS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0605-CR-394
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Richard Good, Judge  
Cause No. 49F09-0408-FD-156089

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**January 30, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Chief Judge**

Following a bench trial, Fred Landers appeals his Class D felony conviction for failure to stop after an accident resulting in serious bodily injury.<sup>1</sup> He claims that the State failed to present sufficient evidence to convict him because, even though he did not initially stop at the accident after his vehicle collided with a motorcycle, he called 911 from his home and returned to the scene approximately half an hour after the accident occurred.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

While driving his dark-colored Chevy Blazer northbound on Michigan Road at approximately 2:30 a.m. on August 28, 2004, Landers collided with a motorcycle as he turned left, or westbound, onto Cold Springs Road in Marion County, Indiana. The motorcycle had a male driver and a female passenger. At trial, Landers testified that, although he “saw an individual go over the hood of [his] truck,” he continued to drive in order to obtain medical assistance. *Tr.* at 165. He first drove to a church located at the intersection of Michigan and Cold Springs Roads, and, after finding it locked, he ran to a house next door; however, no one answered the door. Thereafter, he drove to his own home, which was just over a mile away. Once home, he called 911 to report the accident. While he was there, he drank a beer and some brandy because he “was apprehensive or just upset.” *Id.* at 28, 167-68, 177. He also walked out to his driveway, looked down the street, and then “walked down the street for a minute.” *Id.* at 169. Thereafter, Landers drove back to the

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<sup>1</sup> See IC 9-26-1-1.

scene, arriving approximately thirty minutes after the accident occurred, and reported his involvement in the accident to a deputy.<sup>2</sup>

At the time of Landers's accident with the motorcycle, Michelle Smith was driving her vehicle eastbound on Cold Springs Road and was nearing the Michigan Road intersection. She saw Landers's dark vehicle turn left (westbound), without stopping, onto Cold Springs Road, and, as she described it, his vehicle was "rocking" as it turned the corner. *Id.* at 8. In fact, she feared his oncoming vehicle was going to hit her car. As Smith reached the Michigan Road intersection, she saw the motorcycle and two bodies in the road. She immediately stopped, got out of her vehicle, and called 911. She stayed at the accident scene for what she estimated to be an hour, but never saw Landers return to the location.

On August 31, 2004, the State charged Landers with three Class D felonies: (1) operating a motor vehicle while intoxicated causing serious bodily injury; (2) operating a motor vehicle with a blood alcohol content over .08% causing serious bodily injury; and (3) failure to stop at the scene of an accident resulting in serious bodily injury.

In September 2004, Landers went to the Indianapolis Police Department, seeking to retrieve his vehicle. Landers explained the circumstances to Lieutenant Samuel Drake, stating that he was driving and "hit a guy on a motorcycle." *Id.* at 81. He also told Drake that after the accident he went home and checked the television and radio for reports of the accident.

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<sup>2</sup> At trial, Landers claimed that he brought the glass of brandy with him and offered to share it with some people who had assembled at the scene, including the wrecker driver; however, the dispatch call report indicated the wrecker was summoned at approximately 5:30 a.m., when Landers was at Wishard Hospital submitting to a blood alcohol test.

Following a bench trial, the trial court convicted Landers of operating a motor vehicle while intoxicated causing serious bodily injury and failure to stop at the scene of an accident resulting in serious bodily injury. He appeals the latter conviction.

### **DISCUSSION AND DECISION**

Landers claims that the evidence is insufficient to convict him because, even though he drove away from the scene, he called 911 from home to report the accident and eventually returned to the scene. In reviewing sufficiency claims, we do not reweigh the evidence or judge the credibility of the witnesses. *Loyd v. State*, 787 N.E.2d 953, 958 (Ind. Ct. App. 2003); *Nield v. State*, 677 N.E.2d 79, 81 (Ind. Ct. App. 1997). Rather, we consider only the evidence most favorable to the judgment and the reasonable inferences drawn therefrom. *Id.* We will affirm if there is substantial evidence of probative value to support the trier of fact's conclusion. *Id.*

IC 9-26-1-1 provides as follows:

The driver of a vehicle involved in an accident that results in the injury or death of a person shall do the following:

- (1) Immediately stop the vehicle at the scene of the accident or as close to the accident as possible in a manner that does not obstruct traffic more than is necessary.
- (2) Immediately return to and remain at the scene of the accident until the driver does the following:
  - (A) Gives the driver's name and address and the registration number of the vehicle the driver was driving.
  - (B) Upon request, exhibits the driver's license of the driver to the following:
    - (i) The person struck.

- (ii) The driver or occupant of or person attending each vehicle involved in the accident.
- (C) Determines the need for and renders reasonable assistance to each person injured in the accident, including the removal or the making of arrangements for the removal of each injured person to a physician or hospital for medical treatment.
- (3) Immediately give notice of the accident by the quickest means of communication to one (1) of the following:
  - (A) The local police department if the accident occurs within a municipality.
  - (B) The office of the county sheriff or the nearest state police post if the accident occurs outside a municipality.
- (4) Within ten (10) days after the accident, forward a written report of the accident to the state police department.

Because the statute's elements are listed in the conjunctive, a person commits a criminal offense when he fails to adhere to any one of the requirements. *Nield*, 677 N.E.2d at 81. In this case, the State's charging information alleged Landers failed to "immediately stop his vehicle" at the accident scene and failed to "immediately return to and remain at" the accident scene. *Appellant's App.* at 24. We find that the evidence sufficiently shows that Landers failed to do both.

Although Landers knew that he hit the motorcycle and that the motorcyclist went "over the hood" of his vehicle, Landers did not stop. *Tr.* at 165. He argues that his failure to stop was not a violation of IC 9-26-1-1(1) because his reason for continuing to drive was to obtain assistance, which subsection (3) requires him to do. Specifically, instead of making any initial stop after colliding with the motorcycle, Landers drove to a nearby church and

then ran to a neighboring home, to find assistance and/or call 911. Because he was not successful in finding anyone, he drove to his home, which was just a little more than a mile from the scene. Once he was home, Landers called and reported the accident and his involvement to authorities. Granted, it was only appropriate that Landers make that telephone call; however, we appreciate that he did so. Having said that, we note that if Landers had not failed to stop after hitting the motorcycle, he would have known that Smith, who did stop immediately at the accident, had a cell phone, which she used to call police. Thus, there was no need for him to proceed to various locations in search of a phone to call for assistance. In addition, Landers failed to determine the need for assistance to the persons whom he struck and left lying in the road, where they were at risk of further injury.

Regardless of whether Lander's failure to immediately stop can be disregarded because he was purportedly seeking assistance or a phone to call authorities, he violated the statute by failing to "immediately return to" the scene as required by IC 9-26-1-1(2). Here, Landers arrived back at the scene approximately half an hour after the accident, and he essentially argues that this satisfies the "immediately" requirement. On the facts of this case, we do not agree. The record before us reveals that Landers did not conduct himself in a way that would suggest that he felt any sense of urgency about returning. To the contrary, while at home, Landers took the opportunity to consume a beer and sip some brandy. He also checked the radio and television for reports of the accident, and he walked outside and looked down his street, before driving back to the scene with, according to Landers, his glass of liquor that he claimed to have offered to bystanders. We find that this evidence was

sufficient for the trial court to convict Landers of failure to stop at an accident resulting in serious bodily injury.

Affirmed.

RILEY, J., and FRIEDLANDER, J., concur.